



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

#### **[EPA-R06-OAR-2015-0033; FRL-9925-19-Region 6]**

### **Approval and Promulgation of Implementation Plans; Texas; Public Participation for Air Quality Permit Applications**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking a direct final action to approve two provisions submitted by the State of Texas as revisions to the Texas State Implementation Plan (SIP) on July 2, 2010, specific to the applicability of the public notice requirements to applications for Plant-Wide Applicability (PAL) permits and standard permits for concrete batch plants without enhanced controls. Today's direct final action will complete the rulemaking process started in our December 13, 2012, proposal and approve the public notice provisions into the Texas SIP. The EPA is also taking direct final action to convert the public notice applicability provisions for Texas Flexible Permits from a final conditional approval to a full approval. The EPA is taking this action under section 110 and parts C and D of the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comments, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0033, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions.
- E-mail: Adina Wiley at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).
- Mail or delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2015-0033. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to

the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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## **I. Background**

The Clean Air Act at section 110(a)(2)(C) requires States to develop and implement permitting programs for attainment and nonattainment areas that cover both construction and modification of stationary sources. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 – 51.164.

On June 2, 2010, the Texas Commission on Environmental Quality (TCEQ) adopted amendments to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the Texas SIP. Chairman Bryan W. Shaw, Ph.D, submitted these amendments to the EPA for approval as revisions to the Texas SIP in a letter dated July 2, 2010.

The EPA has taken final action on the majority of the July 2, 2010, SIP submittal for public notice. But, through inadvertent errors, we have neglected to complete the rulemaking process for the public notice applicability provisions for applications for PAL permits at 30 TAC section 39.402(a)(8), standard permits for concrete batch plants without enhanced controls at 30 TAC section 39.402(a)(11), and new and amended flexible permits at 30 TAC section 39.402(a)(4) and (a)(5).

## **II. The EPA's Evaluation**

### **A. *Public Notice Applicability for Applications for PALs and Standard Permits for Concrete Batch Plants without Enhanced Controls***

The EPA proposed approval of the majority of the July 2, 2010, Texas SIP submittal on December 13, 2012, at 77 FR 74129. In this proposed rulemaking and our accompanying Technical Support Document, the EPA presented our evaluation and preliminary determination for the applicability of the public notice requirements for applications for PAL permits at 30 TAC 39.402(a)(8) and standard permits for concrete batch plants without enhanced controls at 30 TAC 39.402(a)(11). In both instances, we determined that the public notice provisions in Chapter 39 for each type of permit application were consistent with all applicable federal requirements and would be fully approvable into the Texas SIP. However, we neglected to include the specific provisions at 30 TAC 39.402(a)(8) and 39.402(a)(11) in our "Proposed Action" statement in the December 13, 2012, Federal Register document. While the public had the opportunity to review and comment on our evaluation and preliminary determination of approvability of these provisions, we never formally proposed these provisions for approval into the Texas SIP. As such, we did not finalize approval of 30 TAC 39.402(a)(8) and (a)(11) with the majority of the public notice provisions on January 6, 2014 at 79 FR 551.

Please see the EPA's December 13, 2012, proposed approval at 77 FR 74129 for our technical evaluation. The evaluation of the applicability of the public notice provisions for PAL permit applications can be found at page 74136. The evaluation of the applicability of the public notice provisions for permit applications for standard permits for concrete batch plants can be found at pages 74136 – 74140. The Technical Support Document dated December 12, 2012, available in the rulemaking docket for this action, provides additional details to support our

determination that the public notice applicability provisions at 30 TAC 39.402(a)(8) and (a)(11) are consistent with federal requirements and fully approvable into the Texas SIP. We incorporate our previous evaluation of these two provisions into this action. We note that because the evaluation was included in our previous preamble and TSD, we did accept and respond to any comments received regarding the applicability of public notice provisions for applications for PALs and standard permits for concrete batch plants without enhanced controls. The EPA received and responded to comments about PAL public notice, but none specific to the applicability provision at 30 TAC section 39.402(a)(8). See 79 FR 551, at 556 and 557-558. Our evaluation and preliminary determination of approvability did not change as a result of these comments. The EPA did not receive any comments specific to the applicability of the public notice provisions for standard permits for concrete batch plants without enhanced controls at 30 TAC 39.402(a)(11); therefore our evaluation of that provision also remains unchanged.

Today's final action is merely correcting our previous error in failing to propose and finalize incorporation of these two provisions into the SIP on the basis of our previous technical evaluation and preliminary determination. The EPA has not changed our rationale. We continue to believe that 30 TAC 39.402(a)(8) and (a)(11) are fully approvable and it is our intent to include these provisions in the Texas SIP.

*B. Public Notice Applicability for Applications for New and Amended Flexible Permits*

The EPA finalized a conditional approval of the Texas Flexible Permits Program on July 14, 2014, at 79 FR 40666. Our final action included conditional approval of the public notice applicability provisions for applications for new and amended flexible permits at 30 TAC sections 39.402(a)(4) and (a)(5) as submitted on July 2, 2010. As a result of this action, the

public notice provisions at 30 TAC sections 39.402(a)(4) and (a)(5) became a part of the Texas SIP contingent upon the TCEQ satisfying the conditions of the December 9, 2013, commitment letter.<sup>1</sup>

In a subsequent proposed rulemaking on December 31, 2014, the EPA determined that the TCEQ satisfied all commitments from the December 9, 2013, commitment letter and thus we proposed to convert our final conditional approval of the Texas Flexible Permits Program to a full approval. See 79 FR 78752. However, we neglected to include the public notice applicability provisions at 30 TAC section 39.402(a)(4) and (a)(5) in that proposal.

Today's final action is merely correcting our previous error in failing to include the public notice applicability provisions for Flexible Permits in our December 2014 proposal to convert the conditional approval to a full approval. Because the EPA has determined that the TCEQ satisfied all commitments from the December 9, 2013, commitment letter, the public notice provisions for the Texas Flexible Permit program at 30 TAC sections 39.402(a)(4) and (a)(5) should be converted to a full approval. The conversion of the remainder of the conditionally approved Texas Flexible Permit program to a full approval will be addressed in a separate rulemaking.

### **III. Final Action**

We are approving through a direct final action revisions to the Texas SIP that pertain to the applicability of public notice provisions for PAL permit applications at 30 TAC section 39.402(a)(8) and for applications for standard permits for concrete batch plants without enhanced

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<sup>1</sup> The December 9, 2013, commitment letter required changes to the Flexible Permits Program in 30 TAC Chapter 116, but did not require any changes to the public notice requirements for new and amended flexible permits at 30 TAC sections 39.402(a)(4) and (a)(5).

controls at 30 TAC section 39.402(a)(11). The EPA has determined that these two provisions are consistent with all applicable federal requirements for public notice requirements for PAL permit applications and minor NSR. Therefore, we are approving 30 TAC sections 39.402(a)(8) and 39.402(a)(11) into the Texas SIP as submitted on July 2, 2010. In today's direct final action, the EPA is also converting our final conditional approval to a final full approval for the applicability of public notice provisions for applications for new and amended flexible permits at 30 TAC sections 39.402(a)(4) and (a)(5). The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received.

Today's direct final rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address those public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. The EPA will not institute a second comment period on this action. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.



#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of revisions to the Texas regulations concerning the applicability of public notice requirements as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the Regional Administrator's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 16, 2015.

Samuel Coleman,  
*Acting Regional Administrator, Region 6.*

Therefore, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270, the table in paragraph (c) is amended by revising the entry “Section 39.402” to read as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
<b>Chapter 39 – Public Notice</b>				
<b>Subchapter H – Applicability and General Provisions</b>				
Section 39.402	Applicability to Air Quality Permits and Permit Amendments	6/2/2012	<b><u>[Insert date of publication in the Federal Register] [Insert Federal Register citation]</u></b>	SIP includes 39.402(a)(1) – (a)(6), (a)(8), and (a)(11).
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[FR Doc. 2015-07124 Filed: 3/27/2015 08:45 am; Publication Date: 3/30/2015]